

persons while engaged in a common activity at a public location;

b) collecting data relating to said detected characteristics of said two or more persons based on said obtained data while said two or more persons are at the public location;

c) extracting common elements from the detected characteristics of said two or more persons from said collected data and associating products and services for advertisement with said common characteristic elements while said two or more persons are at the public location;

d) generating an advertisement related to products or services, said advertisement optimized for said two or more persons according to said common characteristic elements for said two or more persons at said public location; and,

e) transmitting said optimized advertisement to a communication device located at said public location for communicating said optimized advertisement to said two or more persons while at said public location.

### REMARKS

Reconsideration of the above-identified application, as amended, is respectfully requested.

In the Official Action dated March 18, 2002, the Examiner first rejected Claims 1-2, 5, 7, 13, 15-17, 20, 22, 28-30, 33, 35 and 41 under 35 U.S.C. §103(a) as allegedly being unpatentable over Nielsen Air et al. ("Nielsen Air survey identifies potential for airport ads", World Airport Week, vol.2 no. 26, 27 July 1995) in view of Aho et al

(6,256,043 B1). The Examiner then objected to Claims 3-4, 6, 8-12, 14, 18, 19, 21, 23-27, 31, 32, 34 and 36-40 as being dependent upon a rejected base claim, but indicated the claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The amendments to the claims in this response are being submitted for clarification purposes and prompted by the Examiner's application of the newly cited Nielsen Air and Aho references. Consequently, it is submitted this Amendment could not have been earlier presented. Applicants respectfully submit that all amendments are fully supported in the specification, and that no new matter has been added. Specifically, amendments to the independent Claims 1, 16, and 29 have been made to clarify the patentably distinguishable features of the present invention with respect to the Examiner's cited references. Support in the specification for "detected characteristics" may be found at page 3, lines 8-12 and refers to obtaining image data via, e.g. camera (page 8, lines 17-20), and other characteristic data such as biometrics and GPS data via appropriate sensors (page 4, lines 18-24, page 17, lines 8-13). Additionally, support for "contemporaneously" processing, etc, while the two or more persons are in a public location may be found at page 11, line 10 and page 12, line 11, where "current image data" and "current transaction data" are set forth that relate the current activity to two or more persons in a public location. Page 25, line 26 and page 26, lines 1-9 further support the contemporaneous nature of the inventive processing steps with the group of persons in a public location. Applicants respectfully submit that the amendments discussed above have additionally made all dependent claims allowable, and therefore respectfully request the Examiner to

withdraw objection/rejection of those claims under 35 USC §103(a) in view of their dependence on Claims 1, 16 and 29.

With respect to the rejection of independent Claims 1, 16 and 29 under 35 U.S.C. §103(a) as allegedly being unpatentable over Nielsen Air in view of Aho, Applicants respectfully disagree for the following reasons as set forth below.

Regarding the Examiner's rejection of independent Claims 1, 16 and 29 under 35 USC §103(a), the present invention which is directed to a method for obtaining and processing behavior data characterizing the two or more persons in the present invention relates to a common activity performed by two or more persons or other common detected characteristics of the two or more persons which may form the basis of a group optimized advertisement generated in a public location contemporaneously with obtaining and processing the behavior data. The fact that the characteristics are detected further clarify the patentable distinction from Nielsen Air because Nielsen Air requires a survey with active participation by the persons being surveyed, i.e., the persons must respond to survey questions. On the contrary, the "detected characteristics", as claimed in amended Claims 1, 16, and 29 in the present invention advantageously provide for obtaining the data without regard to whether the group of persons is aware of the process, i.e., the process is unobtrusive and does not require active participation of the group, such as answering a survey. It is respectfully submitted that Nielsen Air is deficient in that regard and therefore does not anticipate that aspect of the present invention. Additionally, common behavior data and characteristics include activities such as smoking, drinking (by detecting images of people and analyzing objects that those people manipulate)

driving cars, watching a movie or show, etc. and, are not necessarily used for positively identifying those persons. The process of obtaining data relating to detected characteristics of two or more persons, processing the data, generating and transmitting an optimized advertisement based on the data contemporaneously while the two or more persons are in the public location remains unobvious over Nielsen Air in view of Aho because, inter alia, it is respectfully submitted that Aho is nonanalogous art within the meaning of §2141.01(a) of the MPEP, and should not be used as a prior art reference in analyzing the subject matter at issue (see also In re Oetiker, 977 F.2<sup>nd</sup> 1443, 24 USPQ 2<sup>nd</sup> 1443, 1445 and Wang Laboratories, Inc. v. Toshiba Corp., 993 F.2d 858, 26 USPQ 2<sup>nd</sup> 1767).

Applicants respectfully submit that under the MPEP and guidelines of the above cited cases, the Examiner has failed to demonstrate that the Aho reference is analogous prior art, i.e., that it is in the field of the present invention, or that it is reasonably pertinent to the particular problem with which the present invention is concerned. The present invention is concerned with group advertising in a real-world environment, i.e., public place, based on observed real-world, i.e., public, activities such as smoking, drinking (by detecting images of people and analyzing objects that those people manipulate) driving cars, watching a movie or show, etc., as is taught in Claim 1 of Applicants' invention. On the other hand, Aho is concerned with virtual world graphic enhancements that may include a communications channel transmitting information that is either fixed, geographically based, or based on some other information that is sent to the display system about a single viewer (col. 9, lines 57-67, col. 10, lines 1-53).

Differences in structure and function between the present invention and Aho which point to a finding of nonanalogousness are evidenced by the fact that in the present invention a potential customer does not have to view a display in order to participate in the inventive process, i.e., participation by the potential customer may be completely passive. In contrast, the Aho device requires a graphical interface of some type for interactivity with the potential customer, i.e., the potential customer must actively do something to the apparatus in Aho before the device can work. Moreover, the Aho device is concerned primarily with display enhancements, whereas by contrast, the present invention as claimed in independent Claims 1, 16 and 29, teaches means communicable with a processing means for transmitting an advertisement optimized for said two or more persons, to a communication device located at a public location for communicating the optimized advertisement to two or more persons contemporaneously with the information gathering and processing so that the communication occurs while the two or more persons are still at the public location.

Additionally, for a determination of obviousness, there must be: (1) a suggestion or motivation to one of ordinary skill in the art to modify their teachings to Applicants' invention; (2) a demonstrated reasonable expectation of success in such a modification; and (3) teaching or suggestion of all the claim limitations of Applicants' invention. Applicants respectfully submit that this requirement for a prima facie case of obviousness under 35 USC §103(a) has not been met by Nielsen Air-Aho references, whether taken alone or in combination. It is respectfully submitted that due to the nonanalogousness of the Aho reference, as discussed above, there is no suggestion or motivation for one of

ordinary skill in the art of the present invention to modify the reference teachings to Applicants' invention. Applicants respectfully submit that there could be no demonstrated reasonable expectation of success in modifying Aho, because it would not have occurred to the ordinary person skilled in the art to consider Aho for modification to present a combination with Nielsen Air in order to suggest the present invention, i.e., optimized advertising being generated and transmitted contemporaneously with, and responsive to the obtaining and processing of detected characteristics of two or more persons in a public location. Additionally the Nielsen Air- Aho combination does not teach or suggest all of the claim limitations of Applicants' invention, more specifically, the "advertisement to a communication device located at said public location", as claimed in Claim 1 of the present invention. Respectfully, the Examiner is reminded that neither Nielsen Air, nor Aho teach or suggest the advertisement to a communication device that is in a public place. Nor do they teach or suggest that the advertisement is optimized for two or more persons contemporaneously while characteristics data are being obtained and processed, as claimed in amended independent Claims 1, 16 and 29 of Applicants' invention. The billboard referred to in Aho is located in a user's virtual world, not in a public place (col. 9, lines 40-50), and thus is not directed to an advertisement optimized for a group, i.e., two or more persons, as claimed in independent Claims 1, 16 and 29. Additionally, the Aho device, which operates in a virtual world, not a public place, does not optimize advertisements based on characteristics of two or more persons. On the contrary, the Aho device, at best, inhibits a virtual billboard message depending on information sent to an advertiser by a viewer (Aho, col. 9, lines 15-21). Hence the

combination of the data gathering of Nielsen Air with the virtual environment of Aho would result in a simulation of viewers in a virtual world with the outcome of the simulation possibly being later, i.e., non-contemporaneously, sold to advertisers. Unlike Applicants' invention, such a process does not transmit optimized advertisements to a group based on contemporaneous data processing of detected group characteristics. It should also be understood that neither the virtual display of Aho nor the passenger survey of Nielsen Air alone or in combination teach or suggest that data related to detected, i.e. through sensors, biometrics, cameras, etc, characteristics of two or more persons in a public location, i.e. a group of people, can be obtained, processed, extracted and used to generate and transmit an optimized advertisement for the group contemporaneously while the group is in the public location, as is claimed in Claims 1, 16 and 29 of the present invention. Thus Applicants respectfully submit that independent Claims 1, 16 and 29 remain unobvious over Nielsen Air in view of Aho.

In view of the foregoing, Applicants respectfully request the Examiner to withdraw rejection of independent Claims 1, 16 and 29, and their respective dependent claims under 35 USC §103(a).

Attached hereto is a marked-up version of the changes made to the specification and claims by the present amendment. The attached marked-up version is captioned: **“VERSION WITH MARKINGS TO SHOW CHANGES MADE”**.

In summary, it is respectfully submitted that this application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance be issued. If the Examiner believes that a telephone conference with

the Applicants' attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven Fischman", with a long horizontal line extending to the right.

Steven Fischman  
Registration No. 34,594

SCULLY, SCOTT, MURPHY & PRESSER  
400 Garden City Plaza  
Garden City, New York 11530  
(516) 742-4343

SF:JLB:gmj





**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**IN THE CLAIMS:**

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Please amend Claim 1 as follows:

1. (Twice Amended) A system for generating an advertisement optimized for two or more persons located at a public location, said system comprising:

means for obtaining data relating to detected characteristics of said two or more persons while engaged in a common activity at a public location [during a period of time];

processing means for contemporaneously receiving said obtained data, collecting data relating to said detected characteristics of said two or more persons based on said received data, and extracting common elements from the detected characteristics of said two or more persons from said collected data while said two or more persons are at the public location;

means for generating an advertisement related to products or services, said advertisement optimized for said two or more persons according to said common elements for said two or more persons at said public location; and,

means communicable with said processing means for transmitting said optimized advertisement to a communication device located at said public location for communicating said optimized advertisement [during said period of time,] to said [said] two or more persons while at said public location.

Please amend Claim 16 as follows:

16. (Twice Amended) A method for generating an advertisement optimized for two or more persons located at a public location, said method comprising the steps of:

a) obtaining data relating to detected characteristics of said two or more persons while engaged in a common activity at a public location [during a period of time];

b) collecting data relating to said detected characteristics of said two or more persons based on said obtained data while said two or more persons are at the public location;

c) extracting common elements from the detected characteristics of said two or more persons from said collected data and associating products and services for advertisement with said common characteristic elements while said two or more persons are at the public location;

d) generating an advertisement related to products or services, said advertisement optimized for said two or more persons according to said common characteristic elements for said two or more persons at said public location; and,

e) transmitting said optimized advertisement to a communication device located at said public location for communicating said optimized advertisement to said two or more persons while at said public location.

Please amend Claim 29 as follows:

29. (Twice Amended) A program storage device readable by a machine, tangibly embodying a program of instructions executable by the machine to perform method steps

for generating an advertisement optimized for two or more persons located at a public location, the method steps comprising:

- a) obtaining data relating to detected characteristics of said two or more persons while engaged in a common activity at a public location [during a period of time];
- b) collecting data relating to said detected characteristics of said two or more persons based on said obtained data while said two or more persons are at the public location;
- c) extracting common elements from the detected characteristics of said two or more persons from said collected data and associating products and services for advertisement with said common characteristic elements while said two or more persons are at the public location;
- d) generating an advertisement related to products or services, said advertisement optimized for said two or more persons according to said common characteristic elements for said two or more persons at said public location; and,
- e) transmitting said optimized advertisement to a communication device located at said public location for communicating said optimized advertisement to said two or more persons while at said public location.